

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THOMAS EMBRY,

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Petitioner,

)

Case No. 3:08-CV-01006

)

v.

)

Judge Ann Aldrich

)

CLIFFORD SMITH,

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Magistrate Judge McHargh

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Respondent.

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MEMORANDUM AND ORDER

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On April 18, 2008, Thomas Embry filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254 [dkt. 1]. The case was referred to Magistrate Judge McHargh for a Report and Recommendation (R&R). On November 4, 2009 the R&R was filed, recommending a denial of Embry's petition [dkt. 11]. The same day a copy of the R&R was mailed to Embry at the North Central Correctional Institution. On November 24, 2009, returned mail indicated that Embry had been released and was on parole. The clerk's office contacted the office of the Ohio Attorney General and obtained the address of a halfway house where Embry was living, and mailed a copy of the R&R to that address. However, that mail was also returned indicating that Embry had moved with no forwarding address.

Needless to say, neither party has filed an objection to the R&R. Federal Rule of Civil Procedure 5(b)(2) provides that a paper is served by mailing it to the person's last known address, in which event service is complete upon mailing, or by leaving it with the court clerk if the person has no known address. Accordingly, Embry is considered served with the R&R.

No objections having been filed, this court adopts the R&R in its entirety, and for the reasons stated therein, denies Embry's petition for a writ of habeas corpus.

Because the parties have failed to file objections, they have waived their rights to appellate review. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Therefore, this order is final, but not appealable.

IT IS SO ORDERED.

/s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: January 22, 2010